

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14519, of Doo Young Kim, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to continue to use the first floor as a grocery-deli, in an R-4 District at premises 1970 2nd Street, N.W., (Square 3087, Lot 806).

HEARING DATE: December 17, 1986
DECISION DATE: January 7, 1987

FINDINGS OF FACT:

1. The site, known as premises 1970 2nd Street, N.W. is located at the northwest corner of the intersection of 2nd and Elm Streets. It is in an R-4 District.
2. The site is rectangular in shape with a lot area of 3,392 square feet. It is improved with a two-story brick structure. The first floor houses a non-conforming grocery/deli store and the second floor is used as a residence by the applicant's family.
3. The R-4 District extends in all directions from the site. To the south of the site are row dwellings and Slowe Hall, a Howard University dormitory. To the west are row dwellings and the Gage-Eckington Elementary School. To the north is Carver Hall, another Howard University dormitory, and row dwellings. To the east are row dwellings.
4. BZA Order No. 14124, dated September 20, 1984, granted the applicant permission to use the first floor of the premises as a grocery/delicatessen.
5. Pursuant to Paragraph 8207.2 of the Zoning Regulations the applicant is seeking a special exception under Paragraph 7106.11 to continue to use the first floor as a grocery/deli. The use comprises approximately 900 square feet, 196 square feet of which is devoted to deli use.
6. Grocery use and deli use are both first permitted as a matter-of-right use in the C-1 District.
7. The operation will continue to sell packaged goods and hot and cold sandwiches.

8. The hours of operation will be from 10:00 A.M. to 11:00 P.M. for the grocery and from 11:00 A.M. to 9:00 P.M. for the deli.

9. Goods will be delivered to the site three to five times per day.

10. The applicant's customers generally walk to the site from the nearby Howard University dormitories, elementary schools and residences. Elm and 2nd Streets are local streets and little drive-by business is expected. The use does not draw customers from throughout the Metropolitan Area or District of Columbia. The nature of the service and its small size are designed to meet the limited needs of nearby residents.

11. Trash is removed from the site twice per week at a minimum.

12. No on-site parking is proposed. The applicant testified and the Board found that on-street parking is available along 2nd and Elm Streets.

13. By letter dated December 11, 1986, Advisory Neighborhood Commission (ANC) 1B reported that it opposed the application.

14. By letter dated December 15, 1986, the LeDroit Park Preservation Society reported that it was in opposition to the application.

15. Numerous residents of the neighborhood testified, submitted letters to the record and/or signed a petition in support of the application.

16. A number of neighbors testified in opposition or signed a petition in opposition to the application on the grounds that the applicant had failed to comply with the previous conditions of use related to delivery goods as imposed in the Order No. 14124.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires substantial evidence that the applicant has complied with the of Paragraph 7106.11 and Sub-section 8207.2 of the Zoning Regulations.

Paragraph 7106.11 allows that a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided that:

7106.111 The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.

7106.112 The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

7106.113 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

7106.114 In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

7106.116 The Board may require the provision of or direct changes, modifications or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

The Board concludes that the applicant has met the required burden of proof. Both the existing use and the proposed use are first permitted as a matter-of-right in the C-1 District. The site has been devoted to nonconforming uses in excess of twenty-five years. The Board concludes that the deli use as hereinafter conditioned will not adversely affect the present character and further development of the area. The deli use occupies a small portion of the floor area presently devoted to grocery store use and the nature of the use is such that it will not intensify or create any external effects such as noise, traffic, either, and other deleterious effects. The Board concludes that the use is a neighborhood facility. The size, nature and character of the use is designed to serve walk-in trade generated by the nearby residences, including the Howard University dormitories, and will not attract clientele from other parts of the District of Columbia or the metropolitan area.

The Board further concludes that the proposed use will not adversely affect the neighborhood and will be in harmony with the general purpose and intent of the Zoning Regulations and map. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled.

Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Operation of the use shall be limited to the applicant.
2. Hours of operation of the grocery store shall not exceed from 7:30 A.M. until 10:00 P.M. Hours of operation of the delicatessen shall not exceed from 11:00 A.M. until 9:00 P.M.
3. Only one sign may be located on the outside of the building. The sign shall not exceed 144 square inches in area and shall not be illuminated.
4. The subject premises and adjacent public space (sidewalk, tree box, etc.) shall be kept free of debris and refuse. The trash dumpster shall be kept closed and emptied regularly.
5. A trash receptacle for use by customers shall be placed outside and near the entrance to the store.

VOTE: 5-0 (Charles R. Norris, Paula L. Jewell, William F. McIntosh and Carrie L. Thornhill to grant; Maybelle T. Bennett to grant by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: _____

APR 10 1987